SIKKIM

GOVERNMENT GAZETTE

EXTRAORDINARY
PUBLISHED BY AUTHORITY

Gangtok **Saturday 15th March, 2008** **No. 85**

IN THE HIGH COURT OF SIKKIM AT GANGTOK

No.27/HCS **Dated: 12.03.2008.**

NOTIFICATION

In exercise of the powers conferred by Article 227 of the Constitution of India, Part X of the CPC 1908 and Section 7(iii) of the High Court of Judicature (Jurisdiction & Powers) Proclamation of 1955 as amended by the Adaptation of Sikkim Laws (No 1) Order, 1975 and all other enabling powers, the High Court of Sikkim hereby makes the following Rules for Service of Summons/Notices, Costs and Safe and Proper Custody of Documents before the Commissioner for use in the Subordinate Courts.

Short title and commencement:

1) These Rules shall be called the Sikkim Subordinate Courts, Service of Summons/Notices, Costs and Safe and Proper Custody of Documents before the Commissioner Rules, 2008.

2) They shall come into force on the date of publication in the Official Gazette.

Service of Summons/ notices in original civil suits:

3). (i) The District Judge shall prepare a panel of courier agencies for the purpose of Order V Rule 9, sub rule (1) of the Code of Civil Procedure 1908, duly considering the reputation of the courier agency.

(ii) The summons may be sent through courier agency only when it is proved to the satisfaction of the Court, on the basis of an affidavit filed by the concerned party, that the defendant is avoiding the summons.

(iii) In case of service through courier agency, if the defendant does not appear and the suit is to be proceeded ex-parte, the courier agent shall file an affidavit duly informing of the delivery of the summons to the defendant or an adult member of his family. Such affidavit of the courier agent shall contain the name of the person to whom the summons was delivered, the names of the persons who were present at the residence of the defendant at the time of service, with a brief description of the residential premises where the delivery was made.

4) The courier agent shall be informed that in case such affidavit filed by the agent/ servant is found to be false, then the servant and the owner or Directors of the courier company shall be liable for criminal prosecution on charge of perjury and will be sentenced after a summary trial as provided under Section 344 of the Criminal Procedure Code, in addition to which such the courier agency may be black listed.

5) The District Judge shall, as far as possible, empanel a courier agency having a computerized system of tracking the progress of the courier parcel/packet through transit, up to the stage of service.

6) Where summons is given to the plaintiff for service on defendant, it shall be necessary for the plaintiff to visit the residence of the defendant in the presence of atleast one independent reputed witness of the locality.

7) Where the plaintiff is allowed to undertake service of summons on the defendant, he shall submit an affidavit regarding such service and shall give details of the address of the defendant, time of his visit to the residence of the defendant, persons who were present at the residence, and the name of the person who had accompanied him at the time of service.

8) Where the plaintiff is to effect service of summons on the defendant, the Court may direct him to take the assistance of a junior advocate and such advocate shall file an affidavit regarding such service instead of an affidavit being filed by the plaintiff and/or his witness, in the same manner as stated above. Where the summons taken by the plaintiff is refused by the defendant summons will be reissued by the Court.

9) If it has not been possible to effect service of summons under Order V Rule 9 of the CPC, the provisions of Order V Rule 17 of CPC shall apply and the plaintiff shall within 7 days from the date of his inability to serve the summons, request the Court to permit substituted service.

Costs:

10) a) Where a party succeeds ultimately on one issue or point but loses on a number of other issues or points which were unnecessarily raised, the Court shall impose costs which must be appropriately reduced.

b) The provisions of Section 35, Section 35 A, Section 35 B Section 95 of the CPC shall be adhered to while awarding costs.

c) Costs awarded shall be actual reasonable costs, including the cost of the time spent by the successful party in transportation, lodging if any and other incidental costs besides the payment of Court fee, lawyer's fee, typing and other costs in relation to the litigation.

d) Costs should be assessed according to rules in force and the Judge shall also use his/her discretion after duly assessing the expenditure incurred by the successful party.

e) If any of the parties have unreasonably protracted the proceedings, the Judge shall exercise discretion and impose exemplary costs after taking into account the expenses incurred for the purpose of attendance on the adjourned dates.

f) Reasons must be assigned if costs are not awarded.

Safe and Proper Custody of Documents before the Commissioner appointed by Court to take evidence etc. on commission.

11) a) The Commissioner shall take proper care of the original documents handed over to him by the Court for which purpose a register shall be maintained by every Court, entering therein details of documents handed over by the Court and taken over by the Commissioner.

b) The Commissioner shall keep the documents in safe custody and no party shall have access to any of the records in his custody in the absence of the other party or his counsel.

c) The Commissioner may be required to redeposit the documents with the Court in case long adjournments are granted by him.

d) The documents when handed back by the Commissioner to the Court shall at the time of return be compared with the details of documents, in the register of documents, maintained by the Court.

By order,

Sd/-
Meenakshi M. Rai
REGISTRAR GENERAL

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